

**UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
ANDERSON/GREENWOOD DIVISION**

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Lynel Witherspoon,	)	C/A No. : 8:19-336-HMH-JDA
	)	
Petitioner,	)	
vs.	)	
	)	
Donnie Stonebreaker, Warden of Evans Correctional Institution,	)	NOTICE OF DISMISSAL OF CHARGES
	)	
Respondent.	)	
	)	

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This notice follows the Fourth Circuit’s split panel decision finding that this Court should grant the “writ of habeas corpus unless the State of South Carolina endeavors to prosecute him in a new trial within a reasonable time.” (*Witherspoon v. Stonebreaker*, filed April 8, 2022, COA4 No. 19-7276). (ECF No. 30). The Fourth Circuit denied Respondent’s petition for rehearing en banc on May 9, 2022, (ECF No. 32), and issued the mandate on May 17, 2022, (ECF No. 33). Also on May 17, 2022, this Court directed “Respondent to inform the court within 21 days of the date of this order whether” it intended to seek to prosecute Petitioner again on the state charge of distribution of cocaine. (ECF No. 35). Respondent, on behalf of the State, responds that the State will not seek to prosecute Petitioner on the charge in Indictment No. 2013-GS-26-00857 for distribution of cocaine based on the following:

1. On May 24, 2022, the Fifteenth Circuit Solicitor moved to dismiss the charge of distribution of cocaine, noting that Petitioner “suffered a massive stroke” on April 18, 2022, and is currently “confined to a hospital bed.” (Attachment 1). The State asserted “[d]ue to Defendant Witherspoon’s current medical condition, the state will not pursue a retrial” and requested dismissal of the pending charge in indictment 2013-GS-26-00857. *Id.* The Honorable

Benjamin H. Culbertson signed the order the same day and “judicially dismissed” the pending indictment “as the State is not pursuing a retrial.” *Id.*

2. In light of the foregoing, Respondent submits the question of possible federal habeas relief if the State does not retry Petitioner on the prior pending charge of distribution of cocaine “within a reasonable time” is moot and the habeas action should be dismissed.

Respectfully submitted,

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May 24, 2022.

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